TABLE OF CONTENTS

SH2510487 / FO2418182

10. Witness Gary Balderston

11. Witness Mike Westmoreland

12. Witness Heriberto Ortega

13. Witness Michael Rivera

14. Witness Jaime Leclercq

15. Witness [redacted]

16. Sergeant Daniel Inez

17. Suspect Rodolfo Martinez

EXHIBITS

- **A** **One (1) compact disc containing the Los Angeles County Sheriff's Department Homicide Bureau case book in PDF format, URN #016-25785-1363-057.**
- **B** **Incident History Report, LKD13663-0281, dated December 1, 2016.**
- **C** **Los Angeles County District Attorney's Office letter of opinion, dated February 18, 2020.**
- **D** **Copies of Suspect Martinez' medical records.**
- **E** **A copy of Scientific Services Bureau's sketch of the scene.**
- **F** **One (1) compact disc containing photographs taken by Scientific Services Bureau.**
- **G** **One (1) compact disc containing a video recording by Mr. [redacted]**
- **H** **A copy of the Scientific Services Bureau's sketch and nine (9) photographs shown to Deputy Chavez during his IAB interview.**
- **I** **Six (6) photographs shown to Deputy [redacted] during her IAB interview.**
- **J** **A copy of Deputy [redacted] range qualification record.**

K **One (1) compact disc containing the recordings of Department radio frequencies.**

L **Two (2) photographs shown to Deputy [redacted] during his IAB interview.**

M **One (1) photograph shown to Deputy [redacted] during her IAB interview.**

N **One (1) photograph shown to Deputy [redacted] during his IAB interview.**

O **A copy of supplemental report, URN #016-25785-1363-057, dated December 7, 2016, authored by Sergeant Chaffey Shepherd and Detective Jonas Shipe.**

MISCELLANEOUS DOCUMENTS

Copy of California Executive Order N-40-20 Tolling Statute Time, COVID 19 Crisis, dated March 30, 2020.

Administrative Rights Force/Shooting Investigation forms

Video Admonishment forms

Deputy Chavez' POST training records

Deputy Chavez' range qualification records



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOSEPH P. ESPOSITO • Chief Deputy District Attorney
VICTORIA L. ADAMS • Assistant District Attorney

JAMES GARRISON • Director

February 18, 2020

CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Rodolfo Martinez
J.S.I.D. File #16-0614
L.A.S.D. File # 016-25785-1363-057

Dear Captain Wegener:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 1, 2016, non-fatal shooting of Rodolfo Martinez by Los Angeles County Sheriff's Deputy Antonio Chavez. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Antonio Chavez, #[redacted]

Hall of Justice
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
(213) 974-3888
Fax: (213) 626-5125
WEBSITE: http://da.lacounty.gov

MEMORANDUM

TO: CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Rodolfo Martinez
J.S.I.D. File #16-0614
LASD File #016-25785-1363-057

DATE: February 18, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 1, 2016, non-fatal shooting of Rodolfo Martinez by Los Angeles County Sheriff's Department (LASD) Deputy Antonio Chavez. We have concluded that the shooting was a result of an accident during a justified use of force.

The District Attorney's Command Center was notified of the shooting at approximately 4:00 p.m., on December 1, 2016. The District Attorney Response Team (DART) responded to the location, and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings, summaries of interviews, a crime scene sketch, photographic and video evidence, and witness statements submitted by LASD Homicide Detectives Gail Durham and Howard Cooper.

FACTUAL ANALYSIS

Martinez lived with his [redacted] on [redacted] in the City of [redacted] On the afternoon of December 1, 2016, Martinez was involved in an argument at home.[1] His [redacted] left the house for a time. When they returned, Martinez had barricaded himself inside and was banging on the walls. Martinez' [redacted] called 9-1-1 to make a report.[2] A short time later, she noticed the house was on fire, leading to a second 9-1-1 call to report the fire. Los Angeles County Fire Department (LACFD) personnel were dispatched to the scene.

Deputy [redacted] was the first deputy to respond. She arrived about the same time as LACFD. She heard neighbors yell that there was someone still inside. [redacted] saw Martinez behind a security

[1] Martinez' [redacted] is named [redacted] The reports did not identify his [redacted] by name.
[2] [redacted] reported that her [redacted] had been using marijuana owing to a "nervous breakdown," and had been acting differently for a couple of months. He had been prescribed medication for anxiety.

door at the front entrance, popping his head in and out of the house. [redacted] started yelling at Martinez to come out, but Martinez did not comply.

When LACFD Captain James Sweeny arrived, the house was engulfed in flames. Sweeny forced entry through the front door, where he encountered Martinez. Martinez pulled the metal security door shut. When Sweeny attempted again to go inside, Martinez sprayed Sweeny in the face with a dry chemical fire extinguisher, and subsequently threw the extinguisher in Sweeny's direction. Martinez then grabbed a walker, used it to push Firefighter Alex Magana, and then threw the walker at Magana. About this time, Chavez and Deputy [redacted] arrived on scene in separate vehicles. Martinez was standing in the threshold of the front door. [redacted] heard [redacted] order Martinez out of the house and Martinez refuse to come out. Chavez also ordered Martinez to exit the residence multiple times, but each time Martinez refused.

Chavez saw that Martinez had blood on him, so Chavez donned latex gloves, as did [redacted] [redacted] drew her weapon and covered Chavez as he tried to gain entry through the front door. Martinez picked up the walker, used it to threaten Chavez, and then used it to strike Chavez in the face. Chavez grabbed the walker and pulled it away, at which point Martinez came forward swinging his fists at Chavez. Chavez grabbed hold of Martinez, and pulled him from the porch onto the ground in the front yard, where [redacted] and [redacted] assisted in attempting to restrain Chavez. Parts of the ensuing struggle were captured in a cell phone video shot by a neighbor.

Once on the ground in the front yard, Chavez positioned himself on Martinez' back and attempted to place Martinez in a carotid restraint. Martinez bit Chavez' arm and Chavez moved his arm away. Chavez began punching Martinez in the head in an effort to subdue Martinez while ordering him to stop fighting. [redacted] yelled at Martinez to give her his hands, but Martinez pulled away and tried to bite [redacted] [redacted] then punched Martinez in the left side of his torso in an effort to overcome his resistance.

During the struggle, [redacted] felt a tugging at her holstered service weapon. She looked down and saw Martinez' hand on the weapon. The safety latch on her holster was off making it possible for Martinez to draw the pistol. [redacted] yelled, "He's going for my gun! He's going for my gun!" With two hands, [redacted] capped the holster to keep Martinez from gaining control. Sweeny, who overheard [redacted] exclamation, came over and put his knee on Martinez's back and pulled Martinez' hands away, enabling [redacted] to reset the safety latch and re-position herself to avoid Martinez' efforts to disarm her. Sweeny then saw that additional deputies were arriving and returned to fighting the fire. [redacted] began punching Martinez in the face while ordering him to give her his hands, but he continued to resist.

Both [redacted] and Chavez were growing exhausted from the combined effects of smoke inhalation and the fight. Chavez heard [redacted] repeatedly say, "He's getting my gun!" and believed he may have to shoot Martinez. Chavez arched himself up away from Martinez in order to draw his service weapon.

Deputy [redacted] was at the Paramount Sheriff Station when she heard the radio call requesting a unit with a Taser. She responded to the location and saw deputies involved in a fight with Martinez on the front lawn. She approached the pile and said, "I've got a Taser! I've got a Taser!"

[redacted] then said "I'm gonna tase him!" As Chavez was attempting to position the muzzle of his pistol on Martinez' body, he saw [redacted] Taser and heard [redacted] say that she was going to tase Martinez. Seeing that there was a viable less-lethal option, Chavez holstered his firearm. See Figure 1 below.



Figure 1: Chavez looked toward [redacted] who was armed with a Taser.

In the video soundtrack, [redacted] can be heard yelling, "Tase him! Tase him! Fuckin' tase him!" followed shortly by the sound of the Taser being deployed. [redacted] deployed the Taser to the middle of Martinez' back. See Figures 2A and 2B below.



Figure 2A: [redacted] in the left of the photo, can be seen holding the Taser in her right hand (ringed in red).



Figure 2B: [redacted] moved to position on the right where she deployed the Taser.

[redacted] was uncertain whether the Taser darts had sufficient contact with Martinez to be effective. After activating the Taser for approximately five seconds, [redacted] waited about ten seconds for the Taser to recycle, then deployed the Taser again. Neither activation seemed to affect Martinez, who continued to fight.

During the struggle, Deputy [redacted] observed a steak knife between Martinez' legs. [redacted] alerted others to the presence of the knife, grabbed it, and threw it clear of the group.[3]

Firefighter Michael Rivera walked up to the pile and inquired if he could help. He could see that Chavez appeared spent. Chavez, who could be seen in the video continuing to struggle with Martinez after the Taser deployment, heard a "pop," and then felt a hot sensation on his right hip and near his holster that he associated with a gunshot. While the source of the sound was not apparent to those in the pile at the time, evidence gathered during the investigation (discussed in detail hereafter) indicates that Chavez' pistol discharged in its holster after Chavez re-holstered the weapon when [redacted] arrived with the Taser. In the video, people around the pile, including [redacted] visibly recoiled at the sound of the gunshot.[4] See Figures 3A and 3B below.



Figure 3A: [redacted] back was to the camera. [redacted] was to the left of [redacted]



Figure 3B: People in and around the pile can be seen recoiling after the sound of the gunshot.

In the video, Deputies [redacted] and [redacted] can be seen arriving and running toward the fight shortly after the weapon discharged. [redacted] who did not hear the gunshot, heard Chavez say, "I think I'm shot in the ass." Everybody started saying, "Check each other!" [redacted] walked around the pile examining deputies for gunshot wounds, but observed none. [redacted] saw that Martinez' legs were uncontrolled, and utilized her body weight to control them. Deputies finally succeeded in handcuffing Martinez by applying a set of handcuffs to each hand and then linking the two sets of cuffs together. [redacted] applied a hobble supplied by Deputy [redacted] and Martinez was subdued.

---

[3] Investigators found the knife by a nearby charcoal grill.
[4] When interviewed, firefighter Rivera acknowledged reacting to the sound of the gunshot.

Deputies moved Martinez to the street and away from the smoke. During this move, Martinez' pants slipped down and deputies noticed a puncture wound to Martinez' buttocks. They applied first aid both to the puncture wound and a laceration to Martinez' wrist. Eventually, Martinez was treated by medical technicians and transported to Saint Francis Medical Center. The puncture wound was subsequently identified by a treating physician as a through-and-through gunshot wound.

On December 5, 2016, Martinez was interviewed in custody under Miranda. He acknowledged that at the time of the incident he had been psychologically treated for stress and anxiety, but did not disclose a specific diagnosis of mental illness. Martinez admitted using a knife to cut himself and said that he "burned the house a little bit." Martinez said he used a cigarette lighter to start the fires and that he set the fires because a lot of people (referencing some neighbors) were yelling at him. He said he lit the house on fire in four places, a statement corroborated through observations made by arson investigators who inspected the scene. Martinez claimed he fought with firefighters and deputies at the front door because they were yelling at him. While initially denying that he squirted the fire extinguisher at Sweeny, Martinez eventually admitted that he had done so. Martinez claimed he threw the walker in self-defense, but denied punching deputies or firefighters. Martinez admitted that he tried to take a deputy's gun and said if he had gained control of the gun he would have used it to defend himself. Martinez acknowledged hearing the deputies tell him to stop fighting. He claimed that once the deputies had him down on the ground, he stopped fighting.

When interviewed, Chavez indicated that his service weapon, an M&P 9mm, was loaded to capacity at the start of his shift, with a round in the chamber and 17 rounds in the magazine. When the weapon was inventoried, an empty casing was found in the chamber. The magazine contained 17 rounds. This evidence, coupled with the other evidence of a discharge during the fray, was consistent with the weapon discharging a single round and failing to eject the shell casing.[5] See Figures 4A and 4B below.

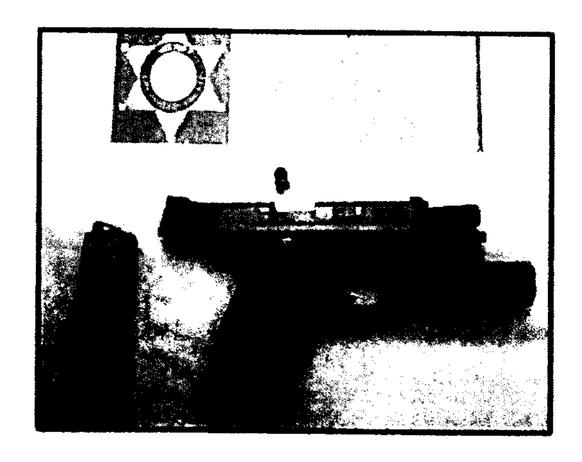


Figure 4A: Photograph of Chavez' weapon during inventory. The casing found in the chamber is displayed above the ejection port.

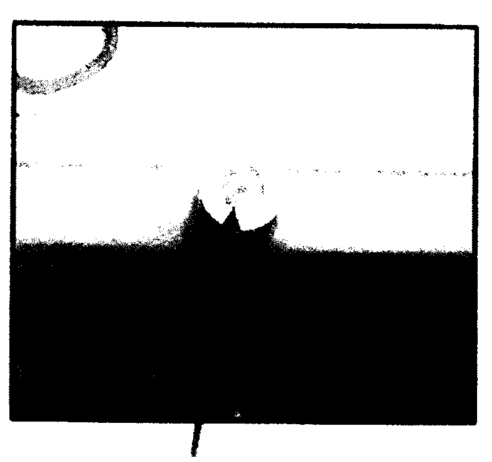


Figure 4B: A strike mark is visible on the back of the shell casing, showing it was center struck by the firing pin.

[5] The failure of the shell casing to eject was likely a result of the holster blocking the ejection port when the weapon cycled, as Chavez had holstered the weapon prior to its discharge.

Gunshot residue was detected near the muzzle end of Chavez' holster, consistent with Chavez' statement that the firearm discharged while in the holster. A possible bullet strike was observed on a nearby hammock frame. A bullet fragment was found on the sidewalk near where the fight occurred. Heat transmitted through the barrel of Chavez' pistol during the discharge is consistent with the sudden hot sensation Chavez experienced on his leg and his corresponding perception of having been shot. All other deputies' weapons were inventoried and found to be fully loaded. Chavez' service weapon was the only one found to have discharged, making it the most probable source of Martinez' gunshot wound given Chavez' and Martinez' close proximity when the discharge occurred.

LEGAL ANALYSIS

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code § 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. In protecting oneself or another, a person may use all the force which that person believes reasonably necessary and that would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent.

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505. In evaluating whether a police officer's use of force was reasonable, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations: "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

A person may not be held criminally liable for an unintended act. This principle applies even in the case of a grossly negligent discharge of a firearm pursuant to Penal Code § 246.3. CALCRIM No. 970 sets forth the elements for the crime of grossly negligent discharge of a firearm as follows:

1. The defendant intentionally shot a firearm;

2. The defendant did the shooting with gross negligence;

3. The shooting could have resulted in the injury or death of a person; and

4. The defendant did not act in self-defense, or in defense of others.

As the CALCRIM elements make plain, grossly negligent discharge of a firearm requires that the person who fired must have intended to do so. The evidence examined in this investigation shows that there was no such intentional discharge. Chavez initially drew his service weapon from its holster believing he may have to use it in self-defense or defense of others. When Barnes arrived with a Taser, Chavez holstered his firearm after assessing that the situation could be resolved by other means. Chavez' firearm discharged after he holstered the weapon, perhaps the result of an unset safety, a hammer in cocked position, or errant pressure on the trigger from forces in the pile. The discharge was not in any case an intentional act on Chavez' part. Accordingly, Chavez is not criminally liable because the discharge was the result of an unintended accident and not the product of gross negligence as defined by the California Penal Code.

CONCLUSION

We find that the discharge that resulted in an injury to Rodolfo Martinez was accidental, not intentional. Deputy Chavez utilized reasonable force and acted in lawful self-defense when dealing with Rodolfo Martinez. We are closing our file and will take no further action in this matter.